

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

In re STEVEN D. et al., Persons Coming
Under the Juvenile Court Law.

B177674

(Super. Ct. No. CK43962)

CAROLYN A.

Appellant,

v.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Respondent.

APPEAL from orders of the Superior Court of Los Angeles County. Sherri S. Sobel, Temporary Judge. (Pursuant to Cal. Const., art VI, § 21.) Affirmed.

Nancy O. Flores, under appointment by the Court of Appeal, for Appellant.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County Counsel and Sterling Honea, Principal Deputy County Counsel, for Respondent.

Carolyn A. ("mother") appeals the orders of the juvenile court terminating her parental rights to her minor daughters Rosetta D. and Carolyn D. Finding no error, we affirm the orders.

FACTS AND PROCEDURAL SUMMARY

Rosetta D., then 2 years old, and Carolyn D., then 7 months old, were detained in November 2000, along with their 4-year-old brother, Steven, and the juvenile court acquired jurisdiction of the children. On September 1, 2004, after nearly four years of dependency court jurisdiction during which the parents failed to reunify with their children, a legal guardian was appointed for Steven, who was diagnosed with substantial special needs.¹ Also on September 1, 2004, the juvenile court held a Welfare and Institutions Code² section 366.26 hearing, at which it found that Rosetta and Carolyn were adoptable and that no exception to termination of rights applied; the court therefore terminated the parental rights of mother and the children's father, Steven D.³ Mother appeals that order.

CONTENTIONS

On appeal, mother argues that "[t]he court made an erroneous finding of adoptability despite the children's special needs, their numerous changes in placements during the reunification period, and the fact that only one available adoptive home was found in four years." She also maintains that the juvenile court erred in finding that the

¹ While mother's opening brief recites that she "contests the juvenile court's order of legal guardianship for her son Steven," she proffers no argument in support of that statement. Consequently, we deem the argument waived. (*People v. Stanley* (1995) 10 Cal.4th 764, 793 ["[E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration."].)

² Further statutory references are to this code.

³ Father is not a party to this appeal.

exception to termination of parental rights found in Welfare and Institutions Codes section 366.26, subdivision (c)(1)(A) does not apply to the facts of this case.

DISCUSSION

1. *Adoptability*

Mother challenges the sufficiency of the evidence of the minors' adoptability. "On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113; 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 278, p. 289.)" (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.)

DCFS identified prospective adoptive parents on whom they had completed and approved a home study to adopt the girls. Indeed, the minors had been placed in the adoptive home prior to the section 366.26 hearing, and had made a good adjustment to the home. The DCFS adoptions supervisor was surprised and pleased that the girls had adjusted so well to the prospective adoptive home in such a short amount of time.

"The issue of adoptability posed in a section 366.26 hearing focuses on the minor, e.g., whether the minor's age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor. [Citations.] Hence, it is not necessary that the minor already be in a potential adoptive home or that there be a proposed adoptive parent 'waiting in the wings.' [Citations.]" (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649, italics omitted.) "Usually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family.*" (*Id.* at pp. 1649- 1650, italics in original.)

While mother expresses concern regarding the special needs of her daughters, the record does not reflect any serious problems which would prevent the girls from being adopted by their prospective adoptive caretakers. Unlike their brother Steven, who has been diagnosed with substantial special needs, both girls are young (four and five), in good health and progressing well in school.

In short, the fact that the girls had been placed with prospective adoptive parents whose home study had been approved and who were committed to adopting the children provides clear and convincing evidence of their adoptability.

2. *Section 366.26, subdivision (c)(1)(A)*

The exception to termination of parental rights found section 366.26, subdivision (c)(1)(A) requires that the child would benefit from continuing a relationship with the parent. The appellate court in *In re Autumn H.*, *supra*, 27 Cal.App.4th 567 defined the required "benefit" to the child as follows: "In the context of the dependency scheme prescribed by the Legislature, we interpret the 'benefit from continuing the [parent/child] relationship' exception to mean the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer." (*Id.* at p. 575.)

In *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, the court observed that even "frequent and loving contact" is insufficient to "establish the 'benefit from a continuing relationship' contemplated by the statute." (*Id.* at p. 1418.) "Interaction between [a] natural parent and child will always confer some incidental benefit to the child. . . . The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from [the] child to parent." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

Here, substantial evidence supports the court's finding that the minors would derive no substantial benefit from a continuing relationship with their mother. Mother maintained regular visits with the minors at which she was always "attentive," "appropriate," and "pleasant," and the children were described as "comfortable and happy" during the visits. However, mother's mental disorder, diagnosed as a schizoaffective disorder, prevented her from establishing a parental bond with her children. In fact, mother's counsel conceded at the section 366.26 hearing that mother's "activities do not come up to the (c)(1)(A) exception" level. Mother's argument against adoption for Rosetta and Carolyn was not based on the section 366.26, subdivision (c)(1)(A) exception, but was premised on the fact that their brother Steven was going into a guardianship, leading mother to request "that these children continue in a similar track, since they are brother and sister."

In sum, viewing the evidence in the light most favorable to the prevailing party, we find substantial evidence to support the trial court's findings that the minors are adoptable and the section 366.26, subdivision (c)(1)(A) exception does not apply. Consequently, we affirm the orders.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ARMSTRONG, J.

We concur:

TURNER, P.J.

KRIEGLER, J. *

* Judge of the Superior Court of Los Angeles County, assigned by Chief Justice pursuant to article VI, section 6, of the California Constitution.